

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

**DAVID A. STEBBINS**

**APPELLANT**

**v.**

**CASE NO. 18-2441**

**KENNETH HIXSON,  
DAVID GLOVER,  
PHILLIP WHITEAKER, and the  
STATE OF ARKANSAS**

**APPELLEES**

**RESPONSE IN OPPOSITION TO APPELLANT'S  
MOTION FOR LEAVE TO PROCEED ON APPEAL *IN FORMA*  
*PAUPERIS***

COME NOW the Appellees, the State of Arkansas, and Arkansas Court of Appeals Justices Kenneth Hixson, David Glover, and Phillip Whiteaker, by and through their attorneys, Attorney General Leslie Rutledge and Senior Assistant Attorney General Christine A. Cryer, and for their Response in Opposition to Appellant David Stebbins' Motion for Leave to Proceed on Appeal *In Forma Pauperis*, state the following:

1. On May 8, 2018, the district court entered an Opinion and Order in favor of the Appellees and dismissed Stebbins' Complaint. (DE 32) In the Order, the district court deemed Mr. Stebbins' case to be frivolous and dismissed it with prejudice. Specifically, in the Order, the

Court held “Not only has Mr. Stebbins failed to state any claims for which relief may be granted as per Rule 12(b)(6), but he has also sued three appellate court judges and the State of Arkansas without regard to the fact that the judges are immune from suit for performing functions in their judicial capacities. . . “ (*Id.*)

2. On June 7, 2018, Mr. Stebbins filed his Notice of Appeal (DE 36) as well as his motion to proceed with his appeal *in forma pauperis*. (DE 37).

3. Mr. Stebbins’ motion to proceed *in forma pauperis* was properly denied on June 11, 2018. (DE 39) Appellees further argue that Mr. Stebbins’ pending motion should be denied for the reasons Appellees’ Motion to Dismiss was granted and the Complaint dismissed with prejudice.

4. In addition to the dismissal of this district court case, Mr. Stebbins has had a number of other district court cases dismissed due to his failure to state claim upon which relief can be granted:

3:12CV03022 (failure to state a claim)

3:12CV03039 (“strike,” failure to state a claim, and frivolous)

3:12CV03130

3:12CV03131 (frivolous)

4:12CV00704 (failure to state a claim)

4:14CV00227 (failure to state a claim)

3:13CV03068 (failure to state a claim)

3:15CV00332 (sua sponte)

4:15CV00436 (failure to state a claim)

4:16CV00638 (sua sponte, failure to state a claim)

3:17CV03016 (frivolous).

5. The present appeal lacks merit. To allow Mr. Stebbins to proceed on an appeal, without payment of his filing fee, reinforces Mr. Stebbins' belief and practice that he can continuously appeal the rulings of the district court – especially those in which the district court certifies that an appeal would not be taken in good faith – without consequence.

6. For these reasons, the Appellees respectfully oppose Mr. Stebbins' motion to allow him to proceed with his appeal *in forma pauperis* and affirmatively state that if Mr. Stebbins wishes to proceed with his appeal, he should be required to pay the filing fee in order to do so.

WHEREFORE, Appellees, the State of Arkansas, and Arkansas Court of Appeals Justices Kenneth Hixson, David Glover, and Phillip

Whiteaker respectfully ask this Court to deny Mr. Stebbins' motion to proceed *in forma pauperis*.

Respectfully submitted,

LESLIE RUTLEDGE  
Attorney General

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**CERTIFICATE OF COMPLIANCE FOR  
RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR  
LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS**

I hereby certify that the Response in Opposition to Appellant's Motion for Leave to Proceed on Appeal *In Forma Pauperis*, which is being submitted pursuant to Rule 24 of the Federal Rules of Appellate Procedure today, contains a total of 763 words, in proportionally sized 14-point Century Schoolbook font, as calculated by Microsoft Word 2010, the program with which the Motion was prepared. The brief was scanned for viruses before filing and is virus-free.

/s/ Christine A. Cryer

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## **CERTIFICATE OF SERVICE**

I, Christine A. Cryer, Senior Assistant Attorney General, do hereby certify that on July 24, 2018, I electronically filed the forgoing with the Clerk of the Court using the CM/ECF system.

I, Christine A. Cryer, hereby certify that on July 24, 2018, I mailed the document by U.S. Postal Service to the following non CM/ECF participant:

Mr. David Stebbins  
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/s/ Christine A. Cryer